

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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In the Matter of)
)
 Amendment of Section 73.622(b),)
 Table of Allotments,)
 Digital Television Broadcast Stations.)
 (Boca Raton, Florida))

OCT 25 2000

MM Docket No. 00-138
 RM-9896

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

To: Chief, Video Services Division
 Mass Media Bureau

REPLY COMMENTS OF SHERJAN BROADCASTING CO., INC.

1. These Reply Comments are filed on behalf of Sherjan Broadcasting Co., Inc. ("Sherjan"). Sherjan filed initial comments on October 10, 2000. The only other comments of which Sherjan is aware were filed by Channel 63 of Palm Beach, Inc. ("Channel 63"), the current permittee of WPPB-TV, and successor to the petitioner in RM-9896.^{1/} Channel 63 filed an expression of continuing interest in the proposal, which is a requirement for the Commission to make any change in the Table of Allotments; but its comments did not address the impact of the proposal on Sherjan's Station WJAN-CA or on Class A-eligible Station WFUN-LP.^{2/}

^{1/} In its initial comments, Sherjan erroneously concluded, based on information retrieved from the Commission's CDBS web page, that the School Board of Broward County, Florida, had acquired the construction permit for WPPB-TV from Channel 63. Channel 63 subsequently advised Sherjan that although an assignment to the School Board has been approved, it has not yet been consummated.

^{2/} It also appears that none of the past, present, or future owners of WPPB-TV undertook any kind of coordination process before petitioning for rule making or "provide[d] all stations that might be affected by a proposed change notice and an opportunity to comment, object, or submit their own proposals that could be precluded by a proposal under consideration," as encouraged by the Commission in *Advanced Television Systems*, Sixth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 14588, 14670-71, at par. 182 and fn. 321.

2. Sherjan adheres to its initial comments, which demonstrate clearly, and so far without refutation, that the proposed allotment change may not lawfully be adopted because of prohibited contour overlap with WJAN-CA, as well as an increase in interference to WFUN-LP, which has been granted a certification of eligibility to apply for Class A status and thus is a protected facility unless and until it fails to apply for a Class A license by December 11, 2000.

3. There is no basis for any exception to the requirement of the Community Broadcasters Protection Act of 1999^{3/} that WJAN-CA and WFUN-LP be given priority, because the proposed Channel *40 allotment was not in place in the DTV Table of Allotments as of December 9, 1999, the date on which Sherjan filed its certification of Class A eligibility; nor are there any "technical problems requiring an engineering solution" that preclude WPPB-TV from replicating its analog service area on DTV Channel *44 or from adequately serving its community of license with the facilities currently specified in the DTV Table. Moreover, Sherjan demonstrated that even maximization on Channel *44 would cause less prohibited overlap with WJAN-CA than the proposed operation on Channel *40.

4. Finally, Sherjan's comments explained why WPPB-TV's "settlement" with Guenter Marksteiner should not be taken into account or affect the outcome of this proceeding.

^{3/} This statute and other pertinent authorities are fully cited in Sherjan's initial comments.

5. The record in this proceeding establishes conclusively that there is no basis in law or otherwise to adopt the proposed allotment change, so the proposal should not be adopted.

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October 25, 2000

Respectfully submitted,



Peter Tannenwald

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CERTIFICATE OF SERVICE

I, Jennifer N. Reyes, do hereby certify that I have, this 25th day of October, 2000, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Reply Comments of Sherjan Broadcasting Co., Inc." to the following:

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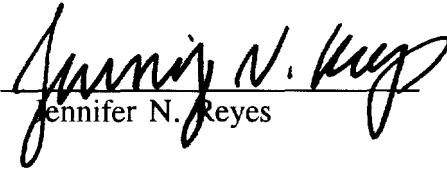
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